

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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## FLINT CPS INKS NORTH AMERICA, LLC.

Case No. 3:20-cv-00208-MMD-CLB

## ORDER

V

**Plaintiff,**

TREND OFFSET PRINTING SERVICES,  
INC. and DOES 1 through 10, inclusive,

## Defendants.

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12 || Plaintiff Flint CPS Inks North America

12 Plaintiff Flint Group North America, LLC as successor in interest to Flint Group  
13 North America Corporation (“Flint Group”) has filed a motion for writ of possession  
14 pursuant to NRS § 31.840, *et seq.* and Fed. R. Civ. P. 64 and seeks emergency relief  
15 (“Motion”) (ECF No. 3.) As to the latter, Flint Group specifically requests that the Court  
16 issues an *ex parte* temporary restraining order (“TRO”) restraining Defendant Trend Offset  
17 Printing Services, Inc. (“Trend Offset”) from using, dissipating, transferring, or otherwise  
18 disposing of printing ink and related materials (“Consigned Goods”) which Flint Group  
19 alleges it owns.<sup>1</sup> (*Id.* at 2, 10–11.) The Court finds that Flint Group fails to meet the heavy  
20 burden of showing that it is entitled to the extreme relief of an *ex parte* TRO and will  
21 therefore deny its request for such.

22       Federal Rule of Civil Procedure 65 governs *ex parte* TROs, and requires that a  
23 motion for a TRO without notice include “specific facts in an affidavit or a verified complaint  
24 [that] clearly show that immediate and irreparable injury, loss, or damage will result to the  
25 movant before the adverse party can be heard in opposition,” as well as written certification  
26 from the movant’s attorney stating “any efforts made to give notice and the reasons why it

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1 should not be required.” Fed. R. Civ. P. 65(b)(1). TROs are governed by the same  
2 standard applicable to preliminary injunctions. See *Stuhlbarg Int’l Sales Co. v. John D.*  
3 *Brush & Co.*, 240 F. 3d 832, 839 n.7 (9th Cir. 2001). A TRO may be issued if a plaintiff  
4 establishes: (1) likelihood of success on the merits; (2) likelihood of irreparable harm in  
5 the absence of preliminary relief; (3) that the balance of equities tips in his favor; and (4)  
6 that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S.  
7 7, 20 (2008). The Ninth Circuit has also held that “serious questions going to the merits”  
8 and a hardship balance that tips sharply toward the plaintiff can support issuance of an  
9 injunction, assuming the other two elements of the *Winter* test are also met.” *Alliance for*  
10 *the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011).

11 Flint Group has not satisfied the requirements for a TRO. Here, Flint Group  
12 contends that a TRO is necessary based on the language in NRS § 31.859. (ECF No. 3  
13 at 10.) That section is titled: “Temporary restraining order in lieu of immediate issue of writ  
14 of possession.” See NRS § 31.859. It specifically states that a “court may issue such  
15 temporary restraining orders directed to the defendant prohibiting such acts with respect  
16 to the property as may appear necessary for the preservation of rights of the parties and  
17 the status of the property.” *Id.* Nothing in this section suggests that Flint Group is excused  
18 from demonstrating that a TRO is necessary per a showing of the *Winters* factors, which  
19 Flint Group completely fails to argue here.

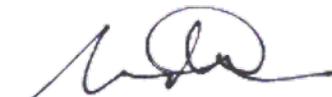
20 To be sure, applying the *Winter* factors, it is not clear what irreparable harm, if any,  
21 would occur absent a TRO. In fact, it appears that compensatory relief would ultimately  
22 be adequate in this action—as highly suggested by the admitted filing of a similar, and  
23 apparently principal, action in the United States District Court for the Central District of  
24 California requesting such relief (see, e.g., ECF No. 3 at 4 n.1; ECF No. 1 at 4 n.2). See  
25 *Flint CPS Inks N. Am., LLC v. Trend Offset Printing Servs., Inc.*, Case No. 8:20-cv-00651  
26 (C.D. Cal., filed April 2, 2020). Of course, the adequacy of compensatory relief weighs  
27 heavily against a finding of irreparable harm. See *Sampson v. Murray*, 415 U.S. 61, 90  
28 (1974). There is also no actual evidence that Trend Offset has specifically threatened to

1 use, dissipate, transfer, or otherwise dispose of the Consigned Goods as the basis for the  
2 TRO suggests. The letter from Trend Offset's counsel, which Flint Group appears to find  
3 threatening, merely purports to bar Flint Group from entering Trend Offset property to  
4 retrieve the Consigned Goods in the interim and under the threat of potential civil and/or  
5 criminal penalty. (See ECF No. 1-8.)

6 Based on the Motion, it is also unclear whether Flint Group will be able to satisfy  
7 the other *Winter* factors: it has not demonstrated a likelihood of success on its relevant  
8 claim and delivery allegations (ECF No. 1 at 8–9),<sup>2</sup> or that the equities and the public  
9 interest would favor a TRO. See *Winter*, 555 U.S. at 20. Because Flint Group has not  
10 established the *Winter* factors, it has not shown it is entitled to a TRO, let alone without  
11 notice to Trend Offset.

12 It is therefore ordered that Flint Group's motion for a temporary restraining order  
13 (ECF No. 3) is denied. The Court defers a ruling on the writ of possession until that issue  
14 is fully briefed.

15 DATED THIS 7<sup>th</sup> day of April 2020.



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18 MIRANDA M. DU  
19 CHIEF UNITED STATES DISTRICT JUDGE  
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28 <sup>2</sup>Particularly concerning for the Court is whether Flint Group would be able to establish NRS § 31.850(1)'s requisite showings in light of the disjunctive language in the contract that Flint Group relies on to argue that it owns the Consigned Goods. Specifically, the contract provides:

Ownership. Flint Group shall continue to be the owner of the Consigned Goods and hold legal title to same until such time as the earlier of when Purchaser uses the Consigned Goods or pays Flint Group in full for them. Purchaser shall not pledge or grant any security interest in or to the Consigned Goods unless and until they have been purchased by Purchaser.

(ECF No. 1-3 at 3 §1.3(b) (emphasis added).) This language suggests that Trend Offset may very well own the Consigned Goods, so long as it uses it, and then all that is left is for Flint Group to be compensated for such use. But NRS § 31.850(1) specifically requires that Flint Group must show that it is the owner of the property claimed or that it is lawfully entitled to the possession of it. However, the Court is not fully convinced that this showing is likely met in light of the contractual language and the uncertainty of what remains of the Consigned Goods.